IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 139 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

APOORVA SHANTILAL SHAH (HUF)

Appearance:

1. INCOME TAX REFERENCE No. 139 of 1986
MR B.B.NAYAK WITH SMT.M.M.BHATT FOR MR MANISH R BHATT for Applicant.
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'C' has referred the following question of law under section 256(1) of the Income Tax Act,1961 (hereinafter referred to as 'the Act').

"Whether, the Appellate Tribunal is right in law in holding that the assessee is entitled to a deduction under section 80L of the Income Tax Act,1961 in respect of Rs.2,000/- and Rs.3,308/- received on its compulsory deposits for the asst. years 1982-83 and 1983-84 respectively, disregarding the provisions of Sec.80AB of the I.T.Act,1961?"

2 The assessment years involved are 1982-83 and 1983-84. The relevant previous years being S.Y.2037 and S.Y.2038 respectively. The assessee claimed deduction of interest of Rs.3,007/- and Rs.3,308/- respectively for both the years under section 80L of the Act as the said income was earned as interest from compulsory deposits. The Income Tax Officer disallowed the said claim and the assessee went in appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner upheld the assessment orders and being aggrieved the assessee carried the matter in appeal before the Tribunal for both the years. The Tribunal for the reasons stated in its order dated 10/01/1986 upheld the claim of the assessee and allowed the appeals.

3 On behalf of the revenue, Mr.B.B.Nayak along with Smt.M.M.Bhatt for Mr.Manish R.Bhatt appeared and contended that the Tribunal was in error in reading the provisions of section 80AB of the Act along with section 80L of the Act. It was contended that there was no positive income under the head "Other Sources" and hence, there was no question of permitting any deduction under section 80L of the Act. It was submitted that provisions of section 80AB and section 80L of the Act are clearly unambiguous and after insertion of section 80AB of the Act only the net income which is included in the gross total income would be entitled to deduction under Chapter VI-A of the Act. Further contention was raised that for the purpose of ascertaining deductible amount u/s.80L of the Act, it was not necessary for the Income Tax Officer to examine each and every item falling under the head "Other Sources". If there was no positive income under the said head in light of specific provision under section 80AB of the Act, no deduction was permissible

under section 80L of the Act.

4 The scheme for computation of total income commences with section 14 in Chapter IV of the Act, wherein specific heads of income viz. 'A' to 'F' have been laidout. Thereafter, the Act has provided the nature of income specifically falling under each of the heads and the machinery for computing the said income under each of the heads. In so far as the heads specified under items "A" to "E" in section 14 of the Act, it is not necessary for us to deal with the same for the present controversy. Under item "F" "Income from other sources" is to be computed. Section 56 of the Act provides the nature of income which is to be considered as falling under the said head and section 57 provides for deductions which are permissible for ascertaining the income specified under section 56 of the Act

5 Section 80AB falls in chapter VI-A and the said chapter deals with deduction to be made in computing the total income. Section 80AB provides for deduction to be made with regard to income included in the gross total income. It is stated in the said section that where any deduction is required to be made or allowed under any section falling within the said chapter under the heading 'C' "Deductions in respect of certain incomes" in respect of any income of the nature specified in that section where the income is included in the gross total income of the assessee then regardless of anything contained in that section, computation of deduction under that section has to be of the amount of income of the specified nature as computed in accordance with the provisions of the Act. It is further provided in the said section that such income computed in accordance with the provisions of the Act shall alone be deemed to be the amount of income which is derived or received by the assessee and included in the gross total income. Section 80B(5) defines gross total income to mean the total income computed in accordance with the provisions of the Act before making any deduction under chapter VI-A.

6 Therefore, for an income of the nature described in section 80L it is first of all necessary that it should be included as component of the gross total income. The inclusion has to be of the amount of income which is computed in accordance with the provisions of the Act. It is only after these two stages have been complied with that it is permissible to an assessee to claim deduction under any of the sections specified in heading 'C'- Deductions in respect of certain incomes falling in chapter VI-A.

7 In the present case the assessee has earned interest income from compulsory deposits and is seeking deduction of the said interest income under section 80L of the Act. It appears that the assessee has also earned dividend income from certain shares held by it and for earning such dividend income the assessee had made borrowings on which it has paid interest. Therefore, in relation to dividend income there is deficit as worked out under the provisions of section 56 read with section 57(i) of the Act. The stand of the revenue is that the interest income earned on compulsory deposits has to be set-off against such deficit in relation to the dividend account and if the net figure is negative i.e. deficit, then the assessee cannot claim any deduction under section 80L of the Act.

8 On plain reading of the provisions of the Act with special reference to the Scheme set out hereinbefore it is not possible for us to accept the aforesaid proposition. As stated section 80AB shall come into play at the point of time when the deductions are to be made in computing the total income. "Total income" is defined under section 2(45) of the Act to mean the total amount of income referred to in section 5 computed in the manner laid down in the Act. This takes us to section 56(1) which provides that income of every kind which is not excluded from the total income under the Act shall be chargeable to Income Tax under the head "Income from other sources" if it is not chargeable under any of the heads specified in section 14 viz.items 'A' to 'E'. Interest from compulsory deposit does not fall within any of the specified heads and it would fall within the provisions of section 56(1) of the Act. Section 56(2) of the Act enumerates various other incomes which would fall within this head viz. Income from other sources, and sub-section (2) of section 56 opens with the phrase "in particular, and without prejudice to the generality of the provision of sub-section (1)". As interest from compulsory deposit does not fall within any of the items enumerated in sub-section (2) it is by way of residuary income which would fall under section 56 of the Act. The deductions as are available for computing income under the head "Income from other sources" are specified in section 57 and except for clause (iii) the interest income from compulsory deposits cannot be computed under any other clause. Section 57(iii) provides that any other expenditure which is not in the nature of capital expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income shall be deducted from such residuary income. In the present case

admittedly no expenditure has been incurred for earning interest from compulsory deposits and hence there is no question of reducing the figure of interest income.

9 Now in so far as the contention of revenue to set off one income against another income under the head Income from other sources is concerned, no such provision is found in section 57 of the Act. The emphasis on provision of section 80AB to undertake such exercise is not warranted by the specific provision in view of the fact that the total income already stands computed as provided in accordance with the provisions of the Act and section 80AB comes into play only at that latter stage.

10 In view of this legal position which emerges from a conjoint reading of the various provisions of the Act, we find no infirmity in the reasoning and conclusion of the Tribunal. We, therefore, hold that the Tribunal was right in law that the assessee was entitled to deduction under section 80L of the Act in respect of the interest income received on compulsory deposits for two years under consideration.

11 The question referred to us is answered in the affirmative i.e. in favour of the assessee and against the revenue.

12. The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt